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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:
12

Case No. 2011-708

13 **KATHRYN ANN VOLTZ-MCLAIN**
266 Plumosa Avenue
14 Vista, CA 92083

ACCUSATION

15 Registered Nurse License No. 326784

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about March 31, 1981, the Board of Registered Nursing issued Registered
24 Nurse License Number 326784 to Kathryn Ann Voltz-McLain (Respondent). The Registered
25 Nurse License was in full force and effect at all times relevant to the charges brought herein and
26 will expire on March 31, 2011, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board),

Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board

1 may inquire into the circumstances surrounding the commission of the crime in order
2 to fix the degree of discipline or to determine if the conviction is substantially related
to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"
4 and "registration."

5 9. Section 2761 of the Code states:

6 The board may take disciplinary action against a certified or licensed nurse or
7 deny an application for a certificate or license for any of the following:

8 (a) Unprofessional conduct, which includes, but is not limited to, the
9 following:

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11 (f) Conviction of a felony or of any offense substantially related to the
12 qualifications, functions, and duties of a registered nurse, in which event the record of
the conviction shall be conclusive evidence thereof.

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13 10. Section 2762 of the Code states:

14 In addition to other acts constituting unprofessional conduct within the meaning
15 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person
licensed under this chapter to do any of the following:

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17 (b) Use any controlled substance as defined in Division 10 (commencing with
18 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
19 device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner
dangerous or injurious to himself or herself, any other person, or the public or to the
20 extent that such use impairs his or her ability to conduct with safety to the public the
practice authorized by his or her license.

21 (c) Be convicted of a criminal offense involving the prescription, consumption,
22 or self-administration of any of the substances described in subdivisions (a) and (b) of
this section, or the possession of, or falsification of a record pertaining to, the
23 substances described in subdivision (a) of this section, in which event the record of
the conviction is conclusive evidence thereof.

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1 **REGULATORY PROVISIONS**

2 11. California Code of Regulations, title 16, section 1444, states:

3 A conviction or act shall be considered to be substantially related to the
4 qualifications, functions or duties of a registered nurse if to a substantial degree it
5 evidences the present or potential unfitness of a registered nurse to practice in a
manner consistent with the public health, safety, or welfare. Such convictions or acts
shall include but not be limited to the following:

6 (a) Assaultive or abusive conduct including, but not limited to, those violations
7 listed in subdivision (d) of Penal Code Section 11160.

8 (b) Failure to comply with any mandatory reporting requirements.

9 (c) Theft, dishonesty, fraud, or deceit.

10 (d) Any conviction or act subject to an order of registration pursuant to Section
290 of the Penal Code.

11 12. California Code of Regulations, title 16, section 1445 states:

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13 (b) When considering the suspension or revocation of a license on the grounds
14 that a registered nurse has been convicted of a crime, the board, in evaluating the
15 rehabilitation of such person and his/her eligibility for a license will consider the
following criteria:

16 (1) Nature and severity of the act(s) or offense(s).

17 (2) Total criminal record.

18 (3) The time that has elapsed since commission of the act(s) or offense(s).

19 (4) Whether the licensee has complied with any terms of parole, probation,
restitution or any other sanctions lawfully imposed against the licensee.

20 (5) If applicable, evidence of expungement proceedings pursuant to Section
1203.4 of the Penal Code.

21 (6) Evidence, if any, of rehabilitation submitted by the licensee.

22 **COSTS**

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24 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
25 administrative law judge to direct a licensee found to have committed a violation or violations of
26 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
27 enforcement of the case.

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FIRST CAUSE FOR DISCIPLINE

(September 3, 2010 Criminal Conviction for DUI on July 5, 2010)

14. Respondent has subjected her license to disciplinary action under sections 490 and 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially related to the qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

a. On or about September 3, 2010, in a criminal proceeding entitled *People of the State of California v. Kathryn Ann Voltz McLain*, in San Diego County Superior Court, case number CN280078, Respondent was convicted on her plea of guilty of violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol, a misdemeanor. The court also found true the enhancement allegation that Respondent's blood alcohol concentration (BAC) was .15 percent or more. Count Two, violating Vehicle Code section 23152, subdivision (b),

driving with a BAC of .08 percent or more, was dismissed pursuant to a plea agreement.

b. As a result of the conviction, on or about September 3, 2010, Respondent was sentenced to five years summary probation and ordered to complete a Multiple Conviction Program, pay \$1,952 in fees, fines, and restitution, and comply with the terms of DUI probation.

c. The facts that led to the conviction are that on or about the evening of July 5, 2010, a San Diego County Sheriff's Deputy on patrol was following behind a vehicle driven by Respondent. He observed the vehicle traveling in a serpentine manner down the road, weaving over the lane markers multiple times. The deputy conducted a traffic stop. Upon contact with Respondent, the deputy noted he could smell the odor of an alcoholic beverage emitting from inside the vehicle. Respondent's eyes were reddened, watery, and glassy, and her eyelids were droopy and her jaw lax. The deputy asked Respondent to exit her vehicle. When she did, he observed that Respondent appeared extremely lethargic. While speaking with Respondent outside of her vehicle, the deputy could smell the odor of an alcoholic beverage emitting from

Respondent's breath and her person. Respondent submitted to a preliminary alcohol screening test and field sobriety tests. Based on his observations of Respondent's objective symptoms of intoxication, Respondent was arrested for driving under the influence.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(September 3, 2010 Criminal Conviction for DUI on July 20, 2010)**

3 15. Respondent has subjected her license to disciplinary action under sections 490 and
4 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially
5 related to the qualifications, functions, and duties of a registered nurse. The circumstances are as
6 follows:

7 a. On or about September 3, 2010, in a criminal proceeding entitled *People of the*
8 *State of California v. Kathryn Ann Voltz McLain*, in San Diego County Superior Court, case
9 number CN281344, Respondent was convicted on her plea of guilty of violating Vehicle Code
10 section 23152, subdivision (a), driving under the influence of alcohol, a misdemeanor. The court
11 also found true the enhancement allegation that Respondent's blood alcohol concentration (BAC)
12 was .15 percent or more. The conviction was also enhanced by Respondent's refusal to submit to

13 a chemical test at the time of her arrest, pursuant to Vehicle Code section 23578. The Count Two
14 of the Complaint, violation of Vehicle Code section 23152, subdivision (b), driving with a BAC
15 of .08 percent or more, was dismissed pursuant to a plea agreement.

16 b. As a result of the conviction, on or about September 3, 2010, Respondent was
17 sentenced to five years summary probation and ordered to complete a Multiple Conviction
18 Program (in conjunction with her conviction detailed in paragraph 14, above), pay \$1,952 in fees,
19 fines, and restitution, and comply with the terms of DUI probation. Respondent was further
20 ordered to complete 100 hours of volunteer work.

21 c. The facts that led to the conviction are that on or about the evening of July 20,
22 2010, an officer from the Escondido Police Department was dispatched to investigate a report of a
23 possible DUI driver at a shopping mall. Upon arrival, the officer observed Respondent entering
24 her vehicle. By the time the officer arrived alongside her vehicle, she had already started the
25 vehicle and engaged reverse. The officer tapped on the window and asked Respondent to shut off
26 the engine. When speaking with Respondent, the officer noted that her eyes were red and watery,
27 her speech was slurred, and she had a distinct odor of an alcoholic beverage on her breath. The
28 officer had Respondent exit her vehicle; she was very unsteady on her feet and had to use her car

1 for support. Respondent refused to cooperate and submit to a preliminary alcohol screening test
2 or field sobriety tests. Based on Respondent's objective symptoms of intoxication, she was
3 arrested for driving under the influence of alcohol. During booking, she provided a blood sample
4 which was analyzed with a BAC of .19 percent.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(Unprofessional Conduct - Use of Alcohol in a Dangerous Manner)**

7 16. Respondent has subjected her registered nurse license to disciplinary action under
8 section 2762, subdivision (b) of the Code in that on or about July 5, 2010 and July 20, 2010, as
9 described in paragraphs 14 and 15, above, Respondent used alcoholic beverages to an extent or in
10 a manner that was potentially dangerous and injurious to herself and the public in that she
11 operated a motor vehicle with high blood alcohol concentration, .15% and .19%, respectively.

12 **FOURTH CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct - Conviction of Alcohol-Related Criminal Offenses)**

14 17. Respondent has subjected her registered nurse license to disciplinary action under
15 section 2762, subdivision (c) of the Code in that on or about September 3, 2010, as described in
16 paragraphs 14 and 15, above, Respondent was convicted of two separate criminal offenses
17 involving the consumption and/or self-administration of alcohol, both with a high BAC, which
18 constitutes unprofessional conduct.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 326784, issued to
Kathryn Ann Voltz-McLain;

2. Ordering Kathryn Ann Voltz-McLain to pay the Board of Registered Nursing the
reasonable costs of the investigation and enforcement of this case, pursuant to Business and
Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: _____

2/12/11

Louise R. Bailey

LOUISE R. BAILEY, M.ED., RN
Executive Officer

Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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